

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 10-0022

LARRY LULOFF and JANET PERKINS LULOFF
Pro Se Attorney
208 Stormitt Butte Road
Roberts, MT 59070
406-962-3815
FAX - 406-962-3815

LARRY LULOFF AND JANET PERKINS LULOFF
Appellant,

V.

JAMES M. WALTERS and DIANE M. WALTERS
Appellee.

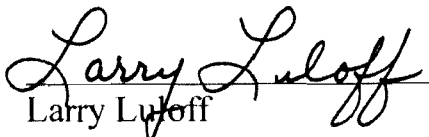
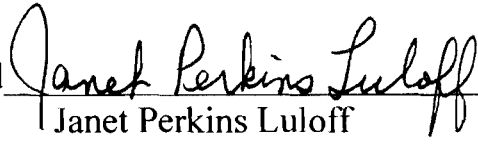
NOTICE is given that Larry Luloff and Janet Perkins Luloff, the Appellants above-named and who are the Defendants in that cause of action filed in the Montana Twenty-Second Judicial District, in and for the County of Carbon, as Cause No. DV-03-57, hereby appeal to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 17th day of December, 2010 and amended on the 18th day of December, 2010. The Honorable Judge Blair Jones presided.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is subject to the mediation process required by M. R. App. P. 7. If subject to mediation, the money judgment being is not less than \$5,000.
2. That this appeal is not an appeal from an order certified as final under M. R. Civ. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached hereto as Exhibit "A."
3. That the notice required by M. R. App. P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.
4. That all available transcripts of the proceedings in this cause have been ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

5. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this 6th day of May, 2010.

 and 
Larry Luloff Janet Perkins Luloff
Pro se Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing

NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I

have served true and accurate copies to the following:

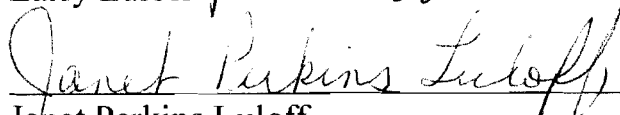
Rochelle Loyning
Clerk of District Court
102 N. Broadway
P.O. Box 948
Red Lodge, MT 59068-0948

Kathryn S. Syth
LaRance & Syth
600 U.S. Bank Building
303 North Broadway
P.O. Box 1456
Billings, MT 59103-1456

Hon. Blair Jones
809A East 4th Avenue
P.O. Box 1268
Columbus, MT 59019

Dated this 6th day of May, 2010.


Larry Luloff


Janet Perkins Luloff

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 (4)(d) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for quoted and indented material; and the word count is less than 2690 words, excluding Certificate of Compliance.

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I. TABLE OF AUTHORITY

--MCA 37-61-421 - (Exhibit 8)

--Supreme Court Order No. DA-07-0061

Walters vs. Luloff

Issue Three, paragraph 28 to paragraph 35, (Exhibit 7)

II. STATEMENT OF ISSUES

1. Did the District court err in over-turning the Supreme Court decision to vacate and remand attorney fee award to Plaintiffs?
2. Did the District court err in calculating the amount of it's reward for attorney fees subject to the contingency contract between Walters and Kathryn Syth?
3. Should Luloffs be awarded a new trial based on the bias of the District Judge and the obvious perjury and fraud committed by the Walters?
4. Should the Luloffs be awarded a new trial based on the fact that they were never served with a copy of the motion for summary judgment?

III. STATEMENT OF THE CASE

The Luloffs have been again charged by the District Court with actions that were unreasonable and vexatious. So Luloffs are put into a position of having to defend the court actions the Luloffs took, in an attempt to convince the Court that accusations of the Plaintiffs were false. This opens the entire District Court action for review by the Supreme Court as to the Supreme Court's interpretation of definition of "unreasonable and vexatious."

IV. STATEMENT OF FACTS

The following facts are attested to and cannot be inverted by lack of procedure and knowledge of case law.

1. Fact: Plaintiffs allege that they built a home on Lot 6, Stormitt Butte Subdivision, then discovered that the well did not have enough water. This is stated in the Original Complaint (Line 8). (Exhibit 1)

2. Fact: In Plaintiffs answers and responses to Discovery Requests from The Brokers, A Real Estate Co., P.C. and Phyllis Webster.

Interrogatory #7: (a) Question: "Please describe the home you built on the property. In doing so, please provide the square footage of the home, square footage of any garage or attachments and provide the number of rooms, bathrooms

and basement.” (a) Answer (by Walters): “It is a two bedroom home with living room, kitchen, one bathroom and sauna room, with a total square footage of 1376 and detached 24 x 24 garage.” (Exhibit 2)

The Luloff’s argument is that these are falsehoods and perjury. Copies of notarized and attested Affidavits from Luloffs, Walter Hill and Josie Hill are a part of this case. (Exhibits 3, 4, 5 and 6)

A home was never built by the Plaintiffs on Lot 6 or any other lot in the Stormitt Butte Subdivision, only a 24 by 24 sq. ft. garage. These facts were known to the District Court and Plaintiffs’ Attorney. Yet the Walters and their Attorney proceeded with their conspiracy against the Luloffs. Luloffs have been put into a defensive action by the Plaintiffs’ perjurious actions. Acceptance of their perjury has affected the credibility of the District Court and the Plaintiffs’ Attorney.

V. STANDARD OF REVIEW

Luloffs will use the Supreme Court Order DA-07-0061, Walters vs. Luloff, Issue three, Paragraph 28 through Paragraph 35, which, in essence, states that attorney fees are usually not awarded unless by Statute or Contract. The complete Supreme Court Order is attached. (Exhibit 7)

VI. SUMMARY OF ARGUMENT

Luloffs are not guilty of unreasonable and vexatious actions in District Court Case DV-03-57.

District Court has become a biased instrument to enforce its will upon the citizens. Its true purpose should be to protect the people from false accusations and charges.

VII. ARGUMENT (As listed in: II. STATEMENT OF ISSUES)

1. Did the District Court err in over-turning the Supreme Court decision to vacate and remand attorney fee award to Plaintiffs?

In the District Court's order, dated August 27, 2009, the court did not list any action/s or behavior that showed any unreasonable delays or vexatious filings to be in violation of MCA 37-61-431. Yet the order stated "On this record, it remains in the interests of justice to award attorney fees to the Walters."

2. Did the District Court err in calculating the amount of it's reward for attorney fees subject to the contingency contract between Walters and Kathryn Syth?

The Contract between the Plaintiffs and their Attorney states that attorney fees will be calculated at 40% of any damage award and at 50% if the Plaintiffs

have to appeal a judgment to the Supreme Court. The Plaintiffs did not appeal to The Supreme Court. Therefore any award to the Plaintiffs' Attorney should remain at 40% of the damage award.

In the Court hearing of 12-2-2009, Luloff read to the Court MCA 37-61-421.

Luloff also reminded the court of the Plaintiffs' Perjury and Fraud. Court chose to ignore the information. Court transcript of 12-2-09, page 2, lines 12-25. (Exhibit 25)

3. Should Luloffs be awarded a new trial based on the bias of the District Judge and the obvious perjury and fraud committed by the Walters?

Luloffs are entitled to defend themselves against false accusations by any legal means. Luloffs missed the date for the Hearing for Summary Judgment due to misreading the Order to appear. Luloffs maintain that the only other possible guilt in this entire case DV-03-57 was that they did not pay the \$100 and request a different District Judge.

4. Should the Luloffs be awarded a new trial based on the fact that they were never served with a copy of the Motion for Summary Judgment?

The Luloffs requested a copy of the Plaintiffs' Brief in Support of Motion for Summary Judgment from both the Plaintiffs' Attorney and the Office of Judge

Blair Jones. Luloffs never received the Brief which was filed with the District Court on April 21, 2008. Both the Plaintiffs' Attorney and Judge Jones were aware of the Luloffs' request. Judge Jones acknowledged, in open court, that he had received the request from Luloffs. In the Court Transcript of the hearing for Summary Judgment which was not attended by Luloffs, Page 3, Lines 12 through 25 and Page 4, Lines 1 through 13 show Judge Jones' reasoning for not providing Luloffs a copy of the Brief (Exhibit 9.)

In defense to the District Court's accusations of Luloffs' unreasonable and vexatious actions, Luloffs offer a timeline of filings and dates leading up to the awarding of Summary Judgment by Judge Jones to the Plaintiffs. The following filings were from the file at the Carbon County Clerk of Court.

12-2-2005 - Order setting trial schedule, 3-10-06 deadline for Summary Judgment motions. (Exhibit 10)

3-13-2006 - Plaintiffs file a motion for Summary Judgment. The motion was not supported by brief, affidavit or discovery. (Exhibit 11)

4-10-2006 - At pretrial hearing in Judge's Chambers, Luloffs objected that Plaintiffs' brief, affidavits and discovery had not been filed. (Exhibit 12)

4-14-2006 - Judge Jones orders new schedule to file Brief for Summary Judgment. Brief from Plaintiffs is due April 17, 2006. (Exhibit 13)

4-21-2006 - Plaintiffs file brief dated April 19, 2006, with a certificate of mailing to Luloffs dated April 20, 2006. (Exhibit 14)

- 4-21-2006 - Plaintiffs file affidavit in support of Motion for Summary Judgment. (Exhibit 15)
- 4-24-2006 - Luloffs file notice of Default. (Exhibit 16)
- 5-16-2006 - Luloffs receive Mike Keele affidavit. (Exhibit 17)
- 5-16-2006 - Plaintiffs filed Brief in support of their delay in submitting Summary Judgment Brief. This brief falsified the meaning of Rule 5(e) Montana rules of Civil Procedure. A fax or electronic facsimile was not sent to the Court timely. (Exhibit 18)
- 5-18-2006 - Luloffs requested extension of hearing date due to emergency surgery. (Exhibit 19)
- 5-19-2006 - Order granting resetting of hearing date. (Exhibit 20)
- 6-15-2006 - Luloffs wanted information concerning Brief in Support of Summary Judgment and had not received a copy. Luloffs went to the Clerk of Court's office to get a copy of the Brief in Support of Summary Judgment and was told that Judge Jones had the case file at his office in Columbus. Luloffs then requested copies of documents from Judge Jones, with a copy to Plaintiffs' Attorney, Kathryn Syth. (Exhibit 21)
- 6-20-2006 - Hearing for Summary Judgment. Luloffs were not present.

James and Diane Walters, the Plaintiffs in the case were also not present. Judge Jones acknowledges to the Court that he has been requested to provide copies of what he has received, the Brief in Request for Summary Judgment. In the Court Report of the hearing for Summary Judgment, Page 3, Lines 12 through 25 and Page 4, Lines 1 through 13 show Judge Jones' reasoning for not providing Luloffs a copy of the Brief. (Exhibit 9)

7-7-2006 - Luloff made an onsite request at the Clerk of Court office in Red Lodge to review the DV03-57 case file and was informed that Judge Jones had removed the complete court file from the Clerk's office. (Exhibit 23)

7-17-2006 - Judge Jones grants Motion for Summary Judgment to the Plaintiffs. (Exhibit 22)

7-25-2006 - Luloffs request an amendment of Summary Judgment as they had not received a copy of the Motions and Pleadings. Also, a notarized affidavit was presented with the request for an amendment of the Summary Judgment stating that Luloffs had never communicated with the Plaintiffs prior to the closing of the sale of the property. (Exhibit 23)

11-3-2006 - Luloffs had to go to the Clerk of Court Office in Red Lodge to get copies of Plaintiffs Brief in Support Motions for Summary Judgment and Affidavits in Support of Plaintiffs Motion for Summary Judgment and were charged \$18.50 for the copies. (Exhibit 24)

In the Affidavit of James Walters and Diane Walters in support of the Plaintiffs Motion for Summary Judgment, received by Luloffs on 11-3-2006 (Exhibit 15) ,

--# 16 states that they had to haul water while the house was being built.

FACT (AGAIN): A home was never built by the Plaintiffs on Lot 6 or any other lot in the Stormitt Butte Subdivision, only a 24 by 24 sq. ft. garage.

--#22 states that they had built a home on Lot 6.

FACT (AGAIN): A home was never built by the Plaintiffs on Lot 6 or any other lot in the Stormitt Butte Subdivision, only a 24 by 24 sq. ft. garage.

Luloffs maintain that the Court cannot and should not award damages and attorney fees when **perjury** and **fraud** is so evident. Neither the Court nor the Plaintiffs Attorney has addressed the issue of fraud upon the court.

The prejudice of the District Judge becomes very evident when reading the District Court Ruling on Attorney fees dated 8/27/2009. (Exhibit 27)

The affidavit from Anthony Kendall has no bearing on this case. (Exhibit 28)

Luloffs' answer to Kendall Affidavit. (Exhibit 29)

Request for Hearing on Kendall Affidavit (Exhibit 30)

Judge's Order dated 12/17/2009 fixing amount of attorney fees (Exhibit 31)

Amended Order dated 12/18/2009 fixing amount of attorney fees (Exhibit 32)


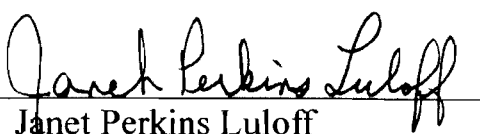
Affidavit of Luloff dated 9/16/03 (Exhibit 33)

VIII. CONCLUSION - PRECISE RELIEF SOUGHT

The Luloffs respectfully request that the court reverse the district court's grant of summary judgment and attorney fees and remand this matter for a new trial.

Further, Luloffs request this matter be remanded because the district as the trier of fact failed to apportion fault as required by Mont. Code Ann. 27-1-705.

Respectfully submitted this 6th day of May, 2010.

 and 
Larry Luloff Janet Perkins Luloff
Pro se Attorney

IX. LIST OF EXHIBITS

1. Initial Complaint - 6-26-03
2. Plaintiffs Answers and Responses to first Combined Discovery
Requests from Defendants, The Brokers, A Real Estate Co., P.C.
And Phyllis Webster - 12-10-03
3. Affidavit of Larry Luloff
4. Affidavit of Janet Luloff
5. Affidavit of Walter Hill
6. Affidavit of Josie Hill
7. Supreme Court Order
8. MCA 37-61-421
9. Transcript Summary Judgment Hearing - 6-20-06
10. Order Setting Trial Schedule - 12-22-05
11. Motion for Summary Judgment - 3-13-06
12. Pre Trial Meeting Judge's Chambers - 4-10-06
13. Order Setting Summary Judgment Deadlines - 4-12-06
14. Plaintiffs' Brief in Support of Motion for Summary Judgment - 4-19-06
15. Walters Affidavit (Summary Judgment) - 4-19-06
16. Luloffs' Notice of Default - 4-21-06
17. Mike Keele Affidavit - 5-15-06

18. Plaintiffs Reply Brief - 5-16-06
19. Request for extension of Hearing Date- 5-18-06
20. Order Restating Hearing Date - 5-19-06
21. Request for copies of Court Documents - 6-15-06
22. Order Granting Motion for Summary Judgment - 7-17-06
23. Luloffs Request for Amendment of Summary Judgment - 7-24-06
24. Receipt from Carbon County Clerk of Court for copies - 11-3-06
25. Court Transcript - 12-2-09
26. Notarized Affidavit from Luloffs - 9-16-03
27. Order confirming award of Attorney Fees and Hearing Date - 8-27-09
28. Affidavit of Anthony Kendall (unfiled copy) - 12-10-09
29. Luloffs' answer to Kendall Affidavit - 12-10-09
30. Request for Hearing concerning Attorney Fees - 12-10-09
31. Order fixing amount of Attorney Fees - 12-17-09
32. Amended Order fixing amount of Attorney Fees - 12-18-09
33. Affidavit of Luloffs - 9-16-03